

# EXHIBIT “D”

**FILED: NEW YORK COUNTY CLERK 07/05/2018 01:17 PM**

INDEX NO. 154611/2018

NYSCEF DOC. NO. 6

RECEIVED NYSCEF: 07/05/2018

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK-----X  
REX ELLIOTT HUMRICH,

Index No. 154611/2018

Plaintiff(s),

**VERIFIED ANSWER**

-against-

GARDEN OF EDEN GOURMET INC.,  
GARDEN OF EDEN GOURMET INC.  
D/B/A GARDEN OF EDEN MARKETPLACE,  
GARDEN OF EDEN ENTERPRISES, INC. and  
AEGEAN GOURMET FOOD, INC.,Defendant(s).  
-----X

Defendant(s), GARDEN OF EDEN GOURMET INC., GARDEN OF EDEN GOURMET INC. D/B/A GARDEN OF EDEN MARKETPLACE, GARDEN OF EDEN ENTERPRISES, INC. and AEGEAN GOURMET FOOD, INC., by their attorneys, WEISER & MCCARTHY, ESQS., as and for its Verified Answer to the Verified Complaint of the plaintiff, herein alleges as follows:

1. Deny any knowledge or information sufficient to form a belief as to the allegations set forth in paragraphs 1 of the Verified Complaint.
2. Admits the allegations set forth in paragraphs 2, 10, 18 and 26 of the Verified Complaint.
3. Deny any knowledge or information sufficient to form a belief as to the allegations set forth in paragraphs 3, 6, 7, 8, 9, 11, 14, 15, 16, 17, 19 and 27 of the Verified Complaint, and respectfully refers all question of law to the Court.
4. Deny each and every allegation set forth in paragraphs 4 and 5 of the Verified Complaint, except admit that on August 19, 2017 defendant **GARDEN OF EDEN GOURMET INC.** operated a market located at 7 East 14<sup>th</sup> Street, in the County, City and State of New York, and respectfully refers all question of law to the Court.
5. Deny each and every allegation set forth in paragraphs 12 and 13 of the Verified Complaint, except admit that on August 19, 2017 defendant **GARDEN OF EDEN GOURMET INC. D/B/A GARDEN OF EDEN MARKETPLACE**, operated a market located at 7 East 14<sup>th</sup> Street, in the County, City and State of New York, and respectfully refers all question of law to the Court.

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6. Deny each and every allegation set forth in paragraphs 20, 21, 22, 23, 24, 25, 28, 29, 30, 31, 32, 33, 34, 35, 39 and 41 of the Verified Complaint.

7. Deny each and every allegation set forth in paragraphs 36, 37, 38 and 40 of the Verified Complaint, and respectfully refer all question of law to the Court.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE**

8. That if the occurrence as alleged in the Verified Complaint occurred at all, it was caused completely or partially by the culpable conduct of the plaintiff and not by the answering defendant(s), and the answering defendant(s) seeks a dismissal or reduction in any recovery had by the plaintiff in proportion to which the culpable conduct attributable to the plaintiff bears to the culpable conduct which caused the damages.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE**

9. If these answering defendant(s) are found negligent, as claimed, and if the defendant's joint liability is fifty percent or less of the total liability assigned to all persons liable, then these defendant's ultimate responsibility for non-economic loss, pursuant to CPLR 1601, cannot exceed this equitable share.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE**

10. That the plaintiff failed to state a cause of action upon which relief may be granted.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE**

11. The plaintiff assumed all the risks inherent in the activity in question.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE**

12. Any judgment plaintiff obtains against the answering defendant(s) are subject to a reduction pursuant to General Obligations Law Section 15-108(a).

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE**

13. That the plaintiff failed to mitigate and/or reduce and/or eliminate his damages and losses, if any, as alleged in the Verified Complaint.

**AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE**

14. That upon information and belief, the plaintiff's injuries and/or damages, if any, were caused by the intervening and/or superseding acts of third parties unrelated to these answering defendant(s).

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**AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE**

15. That the conditions alleged in the Verified Complaint to have caused and/or contributed to the accident, if any, were open, obvious, notorious and apparent.

**AS AND FOR A NINTH AFFIRMATIVE DEFENSE**

16. That the alleged conditions if it exists at all constitutes de-minimus defect.

**AS AND FOR A TENTH AFFIRMATIVE DEFENSE**

17. To the extent plaintiff is entitled to recover any damages in connection with this action, which is expressly denied, said recovery is to be reduced by the amounts received from collateral sources pursuant to CPLR Section 4545.

18. That by reason of this action, said answering defendants have been, and will be, put to costs and expenses, including attorneys' fees.

WHEREFORE, defendant(s), GARDEN OF EDEN GOURMET INC., GARDEN OF EDEN GOURMET INC. D/B/A GARDEN OF EDEN MARKETPLACE, GARDEN OF EDEN ENTERPRISES, INC. and AEGEAN GOURMET FOOD, INC., demands judgment dismissing plaintiff's Verified Complaint against the answering defendant(s), together with the costs and disbursements of this action.

Dated: New York, New York  
July 5, 2018

Yours, etc.,  
**WEISER & MCCARTHY**  
Attorney for Defendant(s)  
**GARDEN OF EDEN GOURMET INC.,  
GARDEN OF EDEN GOURMET INC. D/B/A  
GARDEN OF EDEN MARKETPLACE,  
GARDEN OF EDEN ENTERPRISES, INC. and  
AEGEAN GOURMET FOOD, INC.**

17 State Street, 8<sup>th</sup> Floor

New York, NY 10004

212-943-8940

File No. 19-069311 – MRR

By:

Mindy R. Ricca

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TO:

ERIC H. GREEN, ESQ.  
Attorney for Plaintiff(s)  
295 Madison Avenue, 16<sup>th</sup> Floor  
New York, NY 10017  
212-532-2450

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## V E R I F I C A T I O N

STATE OF NEW YORK }  
COUNTY OF NEW YORK } s.s:

Celal Ceskun, being duly sworn, states as follows:

I am the VP, an officer of GARDEN OF EDEN GOURMET INC.

and GARDEN OF EDEN GOURMET INC. D/B/A GARDEN OF EDEN

MARKETPLACE, a corporation, one of the parties to the action, I have read the annexed

VERIFIED ANSWER, know the contents thereof, and the same are true to my knowledge, except

those matters therein which are stated to be alleged on information and belief, and as to those

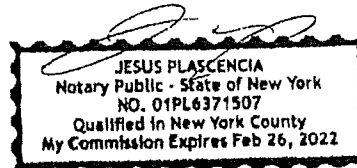
matters I believe them to be true.

GARDEN OF EDEN GOURMET INC. and GARDEN  
OF EDEN GOURMET INC. D/B/A GARDEN OF  
EDEN MARKET PLACE

By: Celal Ceskun

Sworn to before me this  
5<sup>th</sup> day of July, 2018

[Signature]  
Notary Public



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VERIFICATION

STATE OF NEW YORK }  
COUNTY OF NEW YORK } s.s:

Cedric Coskun, being duly sworn, states as follows:

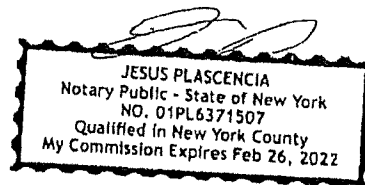
I am the Up, an officer of GARDEN OF EDEN ENTERPRISES, INC. a corporation, one of the parties to the action, I have read the annexed VERIFIED ANSWER, know the contents thereof, and the same are true to my knowledge, except those matters therein which are stated to be alleged on information and belief, and as to those matters I believe them to be true.

GARDEN OF EDEN ENTERPRISES, INC.

By: Cedric Coskun

Sworn to before me this  
5<sup>th</sup> day of July, 2018

[Signature]  
Notary Public



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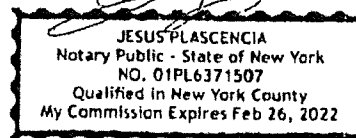
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## V E R I F I C A T I O N

STATE OF NEW YORK }  
COUNTY OF NEW YORK } s.s:Celal Cokuy, being duly sworn, states as follows:

I am the VP, an officer of AEGEAN GOURMET FOOD, INC., a corporation, one of the parties to the action, I have read the annexed VERIFIED ANSWER, know the contents thereof, and the same are true to my knowledge, except those matters therein which are stated to be alleged on information and belief, and as to those matters I believe them to be true.

AEGEAN GOURMET FOOD, INC.

Celal Cokuy  
By:Sworn to before me this  
5<sup>th</sup> day of July, 2018[Signature]  
Notary Public

File No. 19-069311 – MRR